



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

 CONCORD EDUCATIONAL OFFICE PERSONNEL *
 ASSOCIATION *
 *
 Petitioner *
 *
 v. * CASE NO. M-0504:7
 *
 CONCORD SCHOOL BOARD * DECISION NO. 87-01
 *
 Respondent *
 *

APPEARANCES

Representing Concord Educational Office Personnel:

W. Sullivan Cummings, UniServ Dir. - NEA, NH
 James Allmendinger, Esq., Counsel

Representing the Concord School Board:

Edward Kaplan, Esq., Counsel

Also appearing:

Judith Faulkner, Pres. CEOPA
 Linda Labbe, Secretary
 Lawrence White, Asst. Supt. of Business
 Thomas McGahan, School Board Member

BACKGROUND

The Concord Educational Office Personnel Association, NEA-NH, ("Association") filed improper practice charges against the Concord School Board ("Board") in August of 1986. The Association charges that the Board "refused to bargain in good faith by withholding health insurance benefits from newly hired members of the bargaining unit until the first of the month following the month in which they are hired and by falsely stating that this was a requirement of BC/BS against the wishes of the District." (complaint) Concord Educational Office Personnel Association alleged a breach of the collective bargaining agreement and a violation of RSA 273-A:5, I (a) (e) and (h) in that the Board has refused to negotiate this with Concord Educational Office Personnel Association; has violated the existing collective bargaining agreement, and has interfered with the employees in the exercise of their rights under the statute.

The Association further alleges that the collective bargaining agreement between the parties expired on June 30, 1986. During negotiations in 1985, the Board asserted that BC/BS would not permit immediate health insurance coverage for newly hired employees, forcing them to wait until the first day of the month following the month in which an employee was hired. The Association had inquired of BC/BS and discovered that they would change procedures if the Board requested. However, during mediation, the Board indicated it preferred to keep its policy, regardless of BC/BS or disagreement with the Association.

The Association therefore alleged that the Board refused to negotiate after having breached the collective bargaining agreement and thus was also guilty of interfering with employees rights under the statue.

The Board responded agreeing that the contract expired on June 30, 1986 and that the parties were negotiating a successor agreement. The Board further agreed that the past practice was as stated by the complainant, to start health benefits the month following hiring, and says any statements about this at negotiations was for the purpose of clarification only. The Board admits that the contract contains an "anniversary date" for determining fringe benefits, including health, and that this "anniversary date" is the date the employee was hired. The Board denied it had ever informed newly hired employees that health benefits began immediately and denies any conflict between current policy and contract language. The Board admitted having seen a letter from BC/BS about altering health benefits coverage but denies applicability to this situation. The Board further stated that at the time it contracted with BC/BS it was "unaware of alternate method of initiating insurance coverage for new employees."

The Board also filed a Motion to Dismiss and a memorandum to support the motion.

A hearing was held in Room 307 of the Legislative Office Building, Concord, N.H., on November 6, 1986 with all parties represented.

FINDINGS OF FACT

At the hearing, the PELRB heard argument on the motion to dismiss from Board's attorneys and from Association representative and decided to take the motion under advisement. The PELRB however, did rule that the present hearing would be limited to unfair labor practices, i.e. failure to negotiate in good faith.

1. The parties had a collective bargaining agreement from July 1, 1983 to June 30, 1986 and are currently in negotiations for a successor contract.

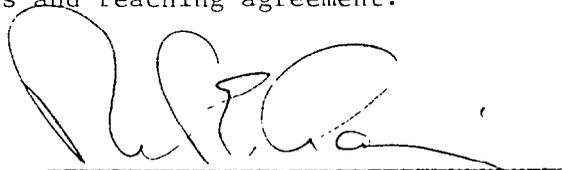
2. During negotiations in January, 1986, the Board proposed that BC/BS benefits commence on the "first day of the month following acceptance by the health insurance carrier of a new employee's application for coverage." (attached complaint)
3. The Association responded that it believed and preferred that the new employee be covered from the first day of hiring. The Association made a proposal orally that it would accept the first of next month proposal if the Board would pay 100% of BC/BS. The Board rejected this proposal and indicated it would continue past practice; i.e. first of month following date of hire. (Association claims they were informed by mediator that Board would continue practice regardless of negotiations). In June of 1986 (see attach. #1 to complaint) the Association received a letter from BC/BS (Smith) indicating that coverage could be arranged at times other than the first of the month.
4. In August of 1986 the Board proposed that health insurance coverage could begin on the first day of employment if certain forms had already been filed otherwise coverage would commence on the first day of the next month (attach. #8) the Association rejected this proposal.
5. In the individual contracts signed by employees there is no statement that informs employees that their health coverage is not immediate but starts the first day of the next month.
6. Association members testified they believed health benefits started immediately and were never told otherwise.
7. Board witness testified that proposal (of January) was not a delay of benefits but simply a clarification of the language and continuation of what Board had been doing all along.
8. The Asst. Supt. of Business testified that in his experience (5 years) the health benefits commenced the first day of the month following employment and continued to last day of month terminated. The Superintendent testified that he had discussed this with BC/BS (Smith) and was under the impression it was their policy to do it this way. He added that he learned differently when he saw the letter from BC/BS (Smith) (attach. #1) to Association Rep. Cummings (June 16, 1986) stating that coverage could be arranged at times other than the first of the month after the date of hire. He further testified that Board proposals incorporating the effective date of the first of the month following were simply attempts to clarify existing practice and that the Board had never said they would never agree to any other date but only that the current practice would continue unless altered by agreement.

RULINGS OF LAW

- A. Both parties have the same view of past practice but differ on what the (expired) contract requires and therefore the basis for negotiating for a new contract. The proper forum for these arguments would be the grievance procedure if the grievance had been filed under the "expired" contract. This is not the issue before the PELRB and we decline to become a part of the grievance procedure.
- B. The issue before the PELRB is whether or not the Board refused to bargain in good faith. The Association claims the Board refused to negotiate about the effective date of the health benefits but we have seen proposals and (orally) rejections and counterproposals on this very subject. The Board has not refused to negotiate. The Association has clearly demonstrated that its desired effective date for health insurance is feasible and the Board has responded to this knowledge with a proposal of its own (August 1986). There has been a misunderstanding but no breach of RSA 273A.

DECISION

1. The School Board is not guilty of unfair labor practices and the complaint is hereby dismissed.
2. The parties are ordered to resume negotiations with a view to settling their differences and reaching agreement.



ROBERT E. CRAIG, Chairman

Signed this 8th day of January 1986.

By unanimous vote. Chairman Robert E. Craig presiding. Board Members, Seymour Osman, Richard E. Molan, Esq. and Richard W. Roulx, present and voting. Also present, Executive Director, Evelyn C. LeBrun.